

ILLINOIS COMMERCE COMMISSION

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DELTA COMMUNICATIONS, L.L.C. }
D/B/A CLEARWAVE COMMUNICATIONS, }
LLC }

Docket No.

04-0284

Petition for Waiver of 83 Ill.Adm.Code }
Part 730.510(a) and 730.510(b). }

CHIEF CLERK'S OFFICE

PETITION FOR WAIVER

NOW COMES, Delta Communications, L.L.C., d/b/a Clearwave Communications, LLC ("Clearwave" or Petitioner"), by its attorney, Gary L. Smith of Loewenstein, Hagen & Smith, P.C., and pursuant to 83 Ill.Adm.Code Section 730.110 of the Commission's Rules and 220 ILCS 5/13-513 of the Universal Telephone and Service Protection Law of 1985 (Act), hereby petitions to permanently waive the requirements of Part 730.510(a) and 730.510(b), 730.535, 730.540, and 730.545, and in support thereof states as follows:

1. Clearwave is a local exchange reseller providing local exchange telecommunications services and holds a certificate of service authority from this Commission under 13-204 of the Act. Clearwave operates in approximately 40 Illinois counties, (see Attachment 1) serving approximately 1,000 access lines. The largest town Clearwaive's service Territory is Harrisburg, Illinois, which has a population of approximately 9,318. This Commission approved an interconnection agreement between Clearwave and Verizon North and Verizon South on docket 03-0358.

2. Clearwave also leases local loops from Verizon North in Verizon North's Saline exchange and Clearwave owns switching facilities and provides local exchange service to approximately 91 subscribers in the Saline exchange.

3. Part 730.510(a) and (b) states as follows:

Section 730.510 Answering Time

a) Operator Offices

- 1) Operator offices shall be staffed so that the average answer time, calculated on a monthly basis, shall not exceed ten seconds for the following types of calls:

- A) toll and assistance; and
- B) information.

- 2) Whenever the average answer time for either toll and assistance calls and/or information calls, calculated on a monthly basis, exceeds ten seconds, the local exchange carrier shall take corrective action and report such action to the Commission within 15 business days after the end of the month in which the violation occurred.

b) Business and Repair Offices

- 1) Business offices (during normal business hours) and repair offices shall be staffed so that the average answer time, calculated on a monthly basis, shall not exceed 60 seconds. In the case where a menu driven, automated, or interactive system is utilized to answer any such call, such system shall provide within the first menu of options, the option of transferring to a live attendant. This requirement shall apply separately to business offices and repair offices, if they are maintained separately.

- 2) Whenever the average answer time for either business offices or repair offices (if maintained separately), calculated on a monthly basis, exceeds 60 seconds, the local exchange carrier shall take corrective action and report such action to the Commission within 15 business days after the end of the month in which the violation occurred.

- 3) Local exchange carriers shall maintain records of answer time performance at their business offices and repair offices. At a minimum, these records shall contain the following information collected on a monthly basis:

- A) Total number of calls received;
- B) Total number of calls answered; and
- C) Average answer time.

On or before March 1 of each year, each local exchange carrier shall file, with the Chief Clerk of the Commission, an annual report containing the above information for its business and repair office(s) (separately when it maintains separate business and repair offices) for each month of the preceding calendar year. This information shall also be made available to the Commission when requested.

4. 730.510(a) requires Petitioner to report average answer time for either toll and assistance calls or information calls when operator assistance is requested. As a reseller, Petitioner does not have operators to answer operator toll and assistance or information questions and instead contracts for that service with Verizon North, Inc. Therefore, Petitioner does not have the ability to maintain the requested information and file the reports with the Commission as outlined in 730.510(a) and should be granted a waiver of this provision.

5. Petitioner does not maintain an automated answering service at its business office or equipment to record the number or answering time of inbound calls. Petitioner maintains 4 full-time individuals to answer telephone inquiries from subscribers. Barring an emergency at the business office, Petitioner answers calls to its business office in less than 60 seconds and answers calls by the third ring over 98% of the time. Therefore, requiring Petitioner to maintain records manually of the total number of calls received and the number of calls answered as well as the average answer time would be burdensome and would not provide any useful information.

6. Unlike larger carriers, when Petitioner's subscribers call to Petitioner's business office, the subscribers do not have to listen to a menu-driven, automated telephone answering system, nor do Petitioner's subscribers have to call to an 800 number before speaking with a service representative personally. Petitioner has 4 live service representatives assigned during normal business hours to promptly answer

subscriber telephone calls to Petitioner's business office and Petitioner should be granted a waiver of 730.510(b).

7. Part 730.535, states as follows:

Section 730.535 Interruptions of Service

- a) On a monthly basis, each local exchange carrier shall clear 95% of all out-of-service troubles up to the customer network interface within 24 hours after such troubles are reported by the customer.
- b) For purposes of maintaining records or reporting information relating to the requirement set forth in subsection (a) above, the information required to be so maintained or reported shall be calculated as follows:
 - 1) Each occurrence shall be measured from the "create date and time" to the "cleared date and time."
 - 2) The requirement set forth in subsection (a) shall be calculated as follows:
 - (a) - $(c+d+e+f+g+h+i) = o$ or the "adjusted number of out of service conditions not installed beyond 5 business days"
 - (b) - $(c+d+e+f+g+h+i) = p$ or the "adjusted number of out-of-service calls"

Calculation A (Official Calculation Methodology)

$$\frac{o}{p} \text{ Times } 100 = x$$

Calculation B (Reported to Staff Upon Request)

$$\frac{\frac{o}{p} + \frac{(h)}{(h)} \text{ Time}}{p + s} 100 = x$$

$(100 - x) \equiv$ percent not repaired within 24 hours

Variables used in the above formulas are defined as follows:

a = Total Number of Out of Service Conditions Not Repaired Within 24 Hours

- b = Total Number of "Out of Service" Calls Received by the Company
 - c = Subsequent Reports for the same Out of Service condition
 - d = Condition Caused by Payphone equipment
 - e = Condition Caused by Customer Premises Equipment (CPE) or inside wire
 - f = Exclusion Due to No Access to the Property (when access is required)
 - g = Exclusion Due to Customer Requested Later Appointment
 - h = Exclusion Due to Emergency Situations
 - i = Exclusion Due to Negligent or Willful Act on Part of Customer
 - o = Adjusted Number of Out of Service Conditions not Repaired Within 24 Hours
 - p = Adjusted Number of Out of Service Calls Received by the Company
- 3) Whenever a local exchange carrier fails to meet the monthly requirements contained in this Section, it shall file a monthly report relating to the failed requirement to the Staff of the Illinois Commerce Commission, Telecommunication Division, with a statement of the reasons for such failure, within 15 business days after the end of each month in which such failure occurred.
 - 4) The information to be reported pursuant to this Section shall include out of service troubles occurring on holidays or weekends.
- c) If a carrier knows entry to the dwelling is required in order to clear an out of service trouble report, the local exchange carrier shall provide reasonable notice to the affected customer of such premises visit and shall schedule an appointment to perform any such visit on a mutually agreed date and time (which shall be identified as occurring within a four hour window, such as a morning or afternoon or evening shift, or until June 30, 2004, between 8 A.M. and 4 P.M. on a particular day if the carrier uses the resold services, network or network elements of another carrier to provide services to the customer). When the repair appointment cannot be met within the prescribed appointment window, the local exchange carrier shall notify the customer of the delay and the reason for such delay 24 hours prior to its inability to keep the appointment, and shall then

reschedule a date and time acceptable to the customer when the utility will be able to provide the requested service. The 24 hour notice period shall be construed to mean 24 hour notice by the end of each 4 hour window the day before the scheduled appointment or, until June 30, 2004, by 4 P.M. of the business day preceding the day of the scheduled appointment if the appointment has been scheduled, by a carrier that uses the resold services, network or network elements of another carrier to provide service to the customer, for between 8 A.M. and 4 P.M. of a particular day. Customer-caused delays or customer-missed appointments shall not be subject to the time restrictions of this subsection.

d) Required toll-free numbers

- 1) Each local exchange carrier shall provide to its customers the telephone number to call for repair service. Calls to repair service shall be available without charge. When trouble is apparently located in a connecting company, this trouble report shall be immediately referred to the connecting company.
- 2) Each local exchange carrier shall provide its business office telephone number to its customers. Calls to the business office shall be available without charge.

e) Repair service shall be available at all times for reporting service out of order. Arrangements shall be made to receive customer trouble reports 24 hours daily and to clear out of service trouble at all hours for customers who express an emergency need for service as long as clearing such trouble is consistent with the personal safety of local exchange carrier personnel. For purposes of this subsection (e) only, an emergency need for service shall mean that without service there exists an immediate threat to life, limb, or property.

8. As a reseller, Clearwave does not have the ability to maintain out-of-service troubles to the network within 24 hours after such troubles are reported by the customer. All such maintenance is performed by Verizon North and the records are maintained by Verizon North. Therefore, it is not possible for Petitioner to comply with the reporting requirements of 730.535, Interruptions of Service and Petitioner should be granted a waiver of 730.535.

9. Part 730.540 states:

Section 730.540 Installation Requests

- a) Each local exchange carrier shall complete 90% of its "basic local exchange service installations" within five business days after the customer requests installation or by such later date as requested by applicant, as subject to the exclusions set forth in subsection (f).

This subsection (a) does not apply to the migration of a customer between telecommunications carriers, so long as the customer maintains dial tone.

A telecommunications carrier offering basic local exchange service utilizing the network or network elements of another carrier shall install new lines for basic local exchange service within 3 business days after provisioning of the line or lines, by the carrier whose network or network elements are being utilized, is complete.

- b) Each local exchange carrier shall maintain records and submit reports with respect to this Section as follows: Whenever a local exchange carrier fails to meet the monthly requirements contained in this Section, it shall file a monthly report identifying the installation performance relating to the failed requirement to the Staff of the Illinois Commerce Commission, Telecommunications Division, as well as a statement of the reasons for such failure, within 15 days after the end of the month in which the failure occurred.
- c) For purposes of maintaining records or reporting information relating to the requirement set forth in subsection (a), the information required to be so maintained or reported shall be calculated by measuring customer applications or requests for basic local exchange service installation from the date the customer makes such application or request to the date the installation order is signed off by the carrier as completed.
- d) If a local exchange carrier knows a premises visit (which includes entry into a dwelling) is required in connection with any basic local exchange service installation, the local exchange carrier shall advise the affected customer of such premises visit and shall schedule an appointment to perform any such visit at a mutually agreed upon date and time (which shall be identified as occurring within a four hour window, such as a morning or afternoon or evening shift or until June 30, 2004, between 8 A.M. and 4 P.M. on a particular day if the carrier uses the resold services, network, or network elements of another carrier to provide services to the customer). When the installation appointment cannot be met within the prescribed appointment window, the local exchange carrier shall notify the customer of the delay and the reason for such delay 24 hours prior to its inability to keep the appointment, and shall then reschedule a date and time acceptable to the customer when the utility will be able to provide the

requested service. The 24 hour notice period shall be construed to mean 24 hour notice by the end of each 4 hour window the day before the scheduled appointment, or until June 30, 2004, by 4 P.M. of the business day preceding the day of the scheduled appointment if the appointment has been scheduled by a carrier that uses the resold services, network, or network element of another carrier to provide service to the customer, for between 8 A.M. and 4 P.M. of a particular day. Customer-caused delays or customer-missed appointments shall not be subject to the time restrictions of this subsection.

- e) Each local exchange carrier shall maintain a record of installation requests as reported by its customers. This record shall include appropriate identification of the customer or service affected, the time, date and nature of the installation request, the action taken, the date and time of installations or other disposition, and whether the appointment(s) were kept, cancelled with at least 24 hours notice to the customer, or missed without at least 24 hours notice to the customer.
- f) An installation that is not performed within the intervals referred to in subsections (a) and (d) will not be considered a violation of subsection (a) and (d) for the period of delay if the installation is delayed due to the following:
 - 1) as a result of a negligent or willful act on the part of the customer;
 - 2) as a result of a malfunction of customer-owned telephone equipment or inside wire;
 - 3) as a result of, or extended by, an emergency situation;
 - 4) as a result of the carrier's inability to gain access to the customer's premises due to the customer missing an appointment, provided that the violation is not further extended by the carrier;
 - 5) as a result of a customer request to change the scheduled appointment, provided that the violation is not further extended by the carrier;
 - 6) as a result of a carrier's right to refuse service to a customer as provided in 83 Ill. Adm. Code 735; or
 - 7) as a result of a lack of facilities where a customer requests service at a geographically remote location, a customer requests service in a geographic area where the carrier is not currently offering service, or there are insufficient facilities to meet the customer's request for service, subject to carrier's obligation for reasonable facilities planning.

Notwithstanding anything in this subsection (f) to the contrary, in those situations where an installation cannot be completed at all as a result of the occurrence of any of the causes identified in this subsection (f), the failure to complete such installation shall not be deemed to be a violation of subsection (a).

10. As a reseller, Petitioner does not perform any installations, and relies on Verizon North to make the installations for Petitioner's subscribers. Therefore, Petitioner is unable to comply with the reporting requirements of installations requests under part 730.540 requiring a local exchange carrier to complete 90% of its local exchange service installations within five business days after requested by a customer.

11. Section 730.545 states:

Section 730.545 Trouble Reports

- a) Each local exchange carrier shall maintain basic local exchange service so that the average rate of all customer network trouble reports is no greater than 6 reports per 100 access lines per month.
- b) For purposes of maintaining records or reporting information relating to the requirement set forth in subsection (a), the information required to be so maintained or reported shall be calculated by dividing the number of customer initiated network trouble reports in any given month that are cleared to network dispositions, less customer premises equipment (CPE), inside wire, or emergency situations, by the total number of access lines in service. The rate shall be reported on a per 100 access line basis.
- c) The local exchange carrier shall maintain service so that the percentage of repeat trouble reports for a month does not exceed 20% of the total customer trouble reports.
- d) For purposes of maintaining records or reporting information relating to the objective in subsection (c), the information required to be so maintained or reported shall be calculated by dividing the total number of repeat trouble reports by the total number of customer trouble reports, in said month, and shall exclude troubles related to CPE, inside wire, or emergency situations.
- e) Each local exchange carrier shall maintain a record of repeat trouble reports as reported by its customers. This record shall include appropriate identification of the customer or service affected, the time, date and nature of the repeat trouble report, the action taken, and the date and time of trouble clearance or other disposition.

- f) The local exchange carrier shall maintain service so that the percentage of installation trouble reports for a month does not exceed 20% of the total installations.
- g) Each local exchange carrier shall maintain a record of installation trouble reports as reported by its customers. This record shall include appropriate identification of the customer or service affected, the time, date and nature of the report, the action taken, and the date and time of installation trouble clearance or other disposition.
- h) Each local exchange carrier shall keep scheduled repair appointments when a customer premises visit requires a customer to be present. If the local exchange carrier is unable to keep a scheduled repair appointment, it shall provide 24 hour notice of its inability to keep the repair appointment. The 24 hour notice period shall be construed to mean notice by the end of each 4 hour window the day before the scheduled appointment or, until June 30, 2004, by 4 P.M. of the business day preceding the day of the scheduled appointment if the appointment has been scheduled by a carrier that uses resold services, network or network elements of another carrier to provide service to the customer, for between 8 A.M. and 4 P.M. of a particular day.
- i) Each local exchange carrier shall maintain a record of repair appointments as reported by its customers. This record shall include appropriate identification of the customer or service affected, the time, date and nature of the repair appointment, the action taken, the date and time of repair appointments, and whether the appointments were kept, cancelled with at least 24 hours notice to the customer, or missed without at least 24 hours notice to the customer.

12. As a reseller of local exchange service, Petitioner is not able to comply with the reporting requirements of Section 730.545 relating to trouble reports. When a customer reports trouble on the network, those reports are made directly to Verizon North, and Petitioner, as a reseller, does not have access to that information and is unable to comply with the reporting requirements of Section 730.545. Moreover, the maintenance on the local network is performed by Verizon North as the incumbent local exchange carrier, and Petitioner should be granted a waiver of Part 730.545.

13. A waiver in the instant case would not be inconsistent with the statutory provisions authorizing the adoption of Part 730. Part 730 was implemented pursuant to

Sections 8-301 and 13-712 and authorized by Section 10-101 of the Public Utilities Act (220 ILCS 5/8-301, 13-712 and 10-101).

14. The lack of reports for 730.510(a) and (b), 710, 535, 710.540, and 710.545 will have no impact on and will not impede the development of or operation of a competitive market, and instead will stimulate competition.

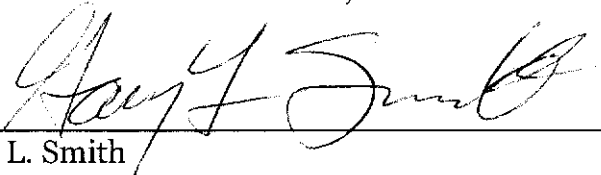
15. No party or consumer will be injured by the granting of a waiver to Petitioner.

16. Rules 730.510(a), 730.510(b), 710, 535, 710.540, and 710.545 went into effect on December 1, 2003, and, as applied to Petitioner, are unreasonable and unnecessarily burdensome. A quarterly report will be due in April 2004, and the Commission should expeditiously grant this waiver.

WHEREFORE, the Petitioner prays that the Commission grant this Petition for Waiver, enter an order without hearing permanently waiving the requirements of 830 Ill.Adm.Code 710.510(a), 710.510(b), 710, 535, 710.540, and 710.545 for Petitioner, and for such other and further relief as is deemed just.

Respectfully submitted,

DELTA COMMUNICATIONS, L.L.C., D/B/A
CLEARWAVE COMMUNICATIONS, LLC

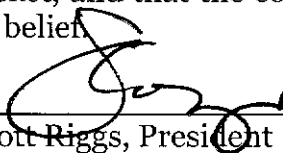


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STATE OF ILLINOIS)
) SS
COUNTY OF SALINE)

The undersigned, Scott Riggs, being first duly sworn on oath, deposes and states that he is the President of Delta Communications, L.L.C., d/b/a Clearwave Communications, LLC that he has read the Petition of Communications, d/b/a Clearwave Communications, LLC filed in this docket, and that the contents thereof are true and correct to the best of his information and belief.



Scott Riggs, President

Subscribed and sworn to before me, a notary public, this 4th day of March, 2004.



Notary Public

